

107TH CONGRESS
2D SESSION

H. R. 3913

To assure equitable treatment in health care coverage of prescription drugs under group health plans, health insurance coverage, Medicare and Medicaid managed care arrangements, Medigap insurance coverage, and health plans under the Federal employees' health benefits program (FEHBP).

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2002

Mrs. LOWEY (for herself, Mr. DEFazio, Mr. BERRY, Mr. McNULTY, Mr. PALLONE, and Mr. Blagojevich) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Education and the Workforce, and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To assure equitable treatment in health care coverage of prescription drugs under group health plans, health insurance coverage, Medicare and Medicaid managed care arrangements, Medigap insurance coverage, and health plans under the Federal employees' health benefits program (FEHBP).

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Prescription Drug
3 Benefit Equity Act of 2002”.

4 **SEC. 2. EQUITY IN PROVISION OF PRESCRIPTION DRUG**
5 **COVERAGE.**

6 (a) GROUP HEALTH PLANS.—

7 (1) PUBLIC HEALTH SERVICE ACT AMEND-
8 MENTS.—(A) Subpart 2 of part A of title XXVII of
9 the Public Health Service Act is amended by adding
10 at the end the following new section:

11 **“SEC. 2707. EQUITY IN PROVISION OF PRESCRIPTION DRUG**
12 **COVERAGE.**

13 “(a) EQUITY IN PROVISION OF PRESCRIPTION DRUG
14 COVERAGE.—

15 “(1) IN GENERAL.—A group health plan, and a
16 health insurance issuer offering group health insur-
17 ance coverage, that provides for mail-order prescrip-
18 tion drug coverage (as defined in paragraph (3)(A))
19 shall also provide non-mail-order prescription drug
20 coverage consistent with paragraph (2).

21 “(2) EQUITABLE COVERAGE.—A plan or cov-
22 erage provides non-mail-order prescription drug cov-
23 erage consistent with this paragraph only if—

24 “(A) benefits under the non-mail-order
25 prescription coverage are provided for in the
26 case of all drugs and all circumstances under

1 which benefits are provided under the mail-
2 order prescription drug coverage;

3 “(B) no deductible or similar cost-sharing
4 is imposed with respect to benefits under the
5 non-mail-order prescription drug coverage un-
6 less such a deductible or similar cost-sharing is
7 imposed with respect to benefits under the mail-
8 order prescription drug coverage; and

9 “(C) the benefits for the non-mail-order
10 coverage assures payments consistent with ei-
11 ther (or both) of the following clauses:

12 “(i) The dollar amount of payment for
13 prescription drug coverage is not less than
14 the dollar amount of benefits provided with
15 respect to the mail-order coverage for that
16 same coverage.

17 “(ii) The cost-sharing (including
18 deductibles, copayments, or coinsurance)
19 imposed with respect to non-mail-order
20 coverage is not greater (as a percentage of
21 charges or dollar amount, as specified
22 under the coverage) than the cost-sharing
23 imposed with respect to the mail-order cov-
24 erage.

1 “(3) DEFINITIONS.—For purposes of this sub-
2 section:

3 “(A) MAIL-ORDER PRESCRIPTION DRUG
4 COVERAGE.—The term ‘mail-order prescription
5 drug coverage’ means provision of benefits for
6 prescription drugs and biologicals that are de-
7 livered directly to participants and beneficiaries
8 through the mail or similar means.

9 “(B) NON-MAIL-ORDER PRESCRIPTION
10 DRUG COVERAGE.—The term ‘non-mail-order
11 prescription drug coverage’ means the provision
12 of benefits for prescription drugs and
13 biologicals through one or more local phar-
14 macies.

15 “(C) LOCAL PHARMACY.—The term ‘local
16 pharmacy’ means, with respect to a prescription
17 drug or biological and a participant or bene-
18 ficiary, an establishment that is authorized to
19 dispense such drug or biological and that is lo-
20 cated within such distance (not to exceed 5
21 miles in the case of a participant or beneficiary
22 residing in an urban area or 10 miles in the
23 case of a participant or beneficiary residing in
24 a non-urban area) of the residence of such par-

1 ticipant or beneficiary, as the Secretary of
2 Health and Human Services shall prescribe.

3 “(b) PROHIBITIONS.—A group health plan, and a
4 health insurance issuer offering group health insurance
5 coverage in connection with a group health plan, may not
6 provide monetary payments or rebates to an individual to
7 encourage such individual to accept less than the min-
8 imum protections available under this section.

9 “(c) CONSTRUCTION.—Nothing in this section shall
10 be construed as preventing a plan or issuer from—

11 “(1) restricting the drugs for which benefits are
12 provided under the plan or health insurance cov-
13 erage, or

14 “(2) imposing a limitation on the amount of
15 benefits provided with respect to such coverage or
16 the cost-sharing that may be imposed with respect to
17 such coverage,

18 so long as such restrictions and limitations are consistent
19 with subsection (a).

20 “(d) NOTICE.—A group health plan under this part
21 shall comply with the notice requirement under section
22 714(d) of the Employee Retirement Income Security Act
23 of 1974 with respect to the requirements of this section
24 as if such section applied to such plan.”.

1 (B) Section 2723(c) of such Act (42 U.S.C.
2 300gg-23(c)) is amended by striking “section 2704”
3 and inserting “sections 2704 and 2707”.

4 (2) ERISA AMENDMENTS.—(A) Subpart B of
5 part 7 of subtitle B of title I of the Employee Re-
6 tirement Income Security Act of 1974 is amended by
7 adding at the end the following new section:

8 **“SEC. 714. EQUITY IN PROVISION OF PRESCRIPTION DRUG**
9 **COVERAGE.**

10 “(a) EQUITY IN PROVISION OF PRESCRIPTION DRUG
11 COVERAGE.—

12 “(1) IN GENERAL.—A group health plan, and a
13 health insurance issuer offering group health insur-
14 ance coverage, that provides for mail-order prescrip-
15 tion drug coverage (as defined in paragraph (3)(A))
16 shall also provide non-mail-order prescription drug
17 coverage consistent with paragraph (2).

18 “(2) EQUITABLE COVERAGE.—A plan or cov-
19 erage provides non-mail-order prescription drug cov-
20 erage consistent with this paragraph only if—

21 “(A) benefits under the non-mail-order
22 prescription coverage are provided for in the
23 case of all drugs and all circumstances under
24 which benefits are provided under the mail-
25 order prescription drug coverage;

1 “(B) no deductible or similar cost-sharing
2 is imposed with respect to benefits under the
3 non-mail-order prescription drug coverage un-
4 less such a deductible or similar cost-sharing is
5 imposed with respect to benefits under the mail-
6 order prescription drug coverage; and

7 “(C) the benefits for the non-mail-order
8 coverage assures payments consistent with ei-
9 ther (or both) of the following clauses:

10 “(i) The dollar amount of payment for
11 prescription drug coverage is not less than
12 the dollar amount of benefits provided with
13 respect to the mail-order coverage for that
14 same coverage.

15 “(ii) The cost-sharing (including
16 deductibles, copayments, or coinsurance)
17 imposed with respect to non-mail-order
18 coverage is not greater (as a percentage of
19 charges or dollar amount, as specified
20 under the coverage) than the cost-sharing
21 imposed with respect to the mail-order cov-
22 erage.

23 “(3) DEFINITIONS.—For purposes of this sub-
24 section:

1 “(A) MAIL-ORDER PRESCRIPTION DRUG
2 COVERAGE.—The term ‘mail-order prescription
3 drug coverage’ means provision of benefits for
4 prescription drugs and biologicals that are de-
5 livered directly to participants and beneficiaries
6 through the mail or similar means.

7 “(B) NON-MAIL-ORDER PRESCRIPTION
8 DRUG COVERAGE.—The term ‘non-mail-order
9 prescription drug coverage’ means the provision
10 of benefits for prescription drugs and
11 biologicals through one or more local phar-
12 macies.

13 “(C) LOCAL PHARMACY.—The term ‘local
14 pharmacy’ means, with respect to a prescription
15 drug or biological and a participant or bene-
16 ficiary, an establishment that is authorized to
17 dispense such drug or biological and that is lo-
18 cated within such distance (not to exceed 5
19 miles in the case of a participant or beneficiary
20 residing in an urban area or 10 miles in the
21 case of a participant or beneficiary residing in
22 a non-urban area) of the residence of such par-
23 ticipant or beneficiary, as the Secretary of
24 Health and Human Services shall prescribe.

1 “(b) PROHIBITIONS.—A group health plan, and a
2 health insurance issuer offering group health insurance
3 coverage in connection with a group health plan, may not
4 provide monetary payments or rebates to an individual to
5 encourage such individual to accept less than the min-
6 imum protections available under this section.

7 “(c) CONSTRUCTION.—Nothing in this section shall
8 be construed as preventing a plan or issuer from—

9 “(1) restricting the drugs for which benefits are
10 provided under the plan or health insurance cov-
11 erage, or

12 “(2) imposing a limitation on the amount of
13 benefits provided with respect to such coverage or
14 the cost-sharing that may be imposed with respect to
15 such coverage,

16 so long as such restrictions and limitations are consistent
17 with subsection (a).

18 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The
19 imposition of the requirements of this section shall be
20 treated as a material modification in the terms of the plan
21 described in section 102(a)(1), for purposes of assuring
22 notice of such requirements under the plan; except that
23 the summary description required to be provided under the
24 last sentence of section 104(b)(1) with respect to such
25 modification shall be provided by not later than 60 days

1 after the first day of the first plan year in which such
2 requirements apply.”.

3 (B) Section 731(c) of such Act (29 U.S.C.
4 1191(c)) is amended by striking “section 711” and
5 inserting “sections 711 and 714”.

6 (C) Section 732(a) of such Act (29 U.S.C.
7 1191a(a)) is amended by striking “section 711” and
8 inserting “sections 711 and 714”.

9 (D) The table of contents in section 1 of such
10 Act is amended by inserting after the item relating
11 to section 713 the following new item:

“Sec. 714. Equity in provision of prescription drug coverage.”.

12 (3) INTERNAL REVENUE CODE AMEND-
13 MENTS.—Subchapter B of chapter 100 of the Inter-
14 nal Revenue Code of 1986 is amended—

15 (A) in the table of sections, by inserting
16 after the item relating to section 9812 the fol-
17 lowing new item:

“Sec. 9813. Equity in provision of prescription drug coverage.”;
and

18 (B) by inserting after section 9812 the fol-
19 lowing:

20 **“SEC. 9813. EQUITY IN PROVISION OF PRESCRIPTION DRUG**
21 **COVERAGE.**

22 “(a) EQUITY IN PROVISION OF PRESCRIPTION DRUG
23 COVERAGE.—

1 “(1) IN GENERAL.—A group health plan that
2 provides for mail-order prescription drug coverage
3 (as defined in paragraph (3)(A)) shall also provide
4 non-mail-order prescription drug coverage consistent
5 with paragraph (2).

6 “(2) EQUITABLE COVERAGE.—A plan provides
7 non-mail-order prescription drug coverage consistent
8 with this paragraph only if—

9 “(A) benefits under the non-mail-order
10 prescription coverage are provided for in the
11 case of all drugs and all circumstances under
12 which benefits are provided under the mail-
13 order prescription drug coverage;

14 “(B) no deductible or similar cost-sharing
15 is imposed with respect to benefits under the
16 non-mail-order prescription drug coverage un-
17 less such a deductible or similar cost-sharing is
18 imposed with respect to benefits under the mail-
19 order prescription drug coverage; and

20 “(C) the benefits for the non-mail-order
21 coverage assures payments consistent with ei-
22 ther (or both) of the following clauses:

23 “(i) The dollar amount of payment for
24 prescription drug coverage is not less than
25 the dollar amount of benefits provided with

1 respect to the mail-order coverage for that
2 same coverage.

3 “(ii) The cost-sharing (including
4 deductibles, copayments, or coinsurance)
5 imposed with respect to non-mail-order
6 coverage is not greater (as a percentage of
7 charges or dollar amount, as specified
8 under the coverage) than the cost-sharing
9 imposed with respect to the mail-order cov-
10 erage.

11 “(3) DEFINITIONS.—For purposes of this sub-
12 section:

13 “(A) MAIL-ORDER PRESCRIPTION DRUG
14 COVERAGE.—The term ‘mail-order prescription
15 drug coverage’ means provision of benefits for
16 prescription drugs and biologicals that are de-
17 livered directly to participants and beneficiaries
18 through the mail or similar means.

19 “(B) NON-MAIL-ORDER PRESCRIPTION
20 DRUG COVERAGE.—The term ‘non-mail-order
21 prescription drug coverage’ means the provision
22 of benefits for prescription drugs and
23 biologicals through one or more local phar-
24 macies.

1 “(C) LOCAL PHARMACY.—The term ‘local
2 pharmacy’ means, with respect to a prescription
3 drug or biological and a participant or bene-
4 ficiary, an establishment that is authorized to
5 dispense such drug or biological and that is lo-
6 cated within such distance (not to exceed 5
7 miles in the case of a participant or beneficiary
8 residing in an urban area or 10 miles in the
9 case of a participant or beneficiary residing in
10 a non-urban area) of the residence of such par-
11 ticipant or beneficiary, as the Secretary of
12 Health and Human Services shall prescribe.

13 “(b) PROHIBITIONS.—A group health plan may not
14 provide monetary payments or rebates to an individual to
15 encourage such individual to accept less than the min-
16 imum protections available under this section.

17 “(c) CONSTRUCTION.—Nothing in this section shall
18 be construed as preventing a plan from—

19 “(1) restricting the drugs for which benefits are
20 provided under the plan; or

21 “(2) imposing a limitation on the amount of
22 benefits provided with respect to such coverage or
23 the cost-sharing that may be imposed with respect to
24 such coverage,

1 so long as such restrictions and limitations are consistent
2 with subsection (a).”.

3 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B
4 of title XXVII of the Public Health Service Act is amend-
5 ed by inserting after section 2752 the following new sec-
6 tion:

7 **“SEC. 2753. EQUITY IN PROVISION OF PRESCRIPTION DRUG**
8 **COVERAGE.**

9 “(a) IN GENERAL.—The provisions of section 2707
10 (other than subsection (d)) shall apply to health insurance
11 coverage offered by a health insurance issuer in the indi-
12 vidual market in the same manner as it applies to health
13 insurance coverage offered by a health insurance issuer
14 in connection with a group health plan in the small or
15 large group market.

16 “(b) NOTICE.—A health insurance issuer under this
17 part shall comply with the notice requirement under sec-
18 tion 714(d) of the Employee Retirement Income Security
19 Act of 1974 with respect to the requirements referred to
20 in subsection (a) as if such section applied to such issuer
21 and such issuer were a group health plan.”.

22 (2) Section 2762(b)(2) of such Act (42 U.S.C.
23 300gg–62(b)(2)) is amended by striking “section 2751”
24 and inserting “sections 2751 and 2753”.

1 (c) APPLICATION TO MEDICARE MANAGED CARE
2 PLANS.—

3 (1) MEDICARE+CHOICE PLANS.—Section
4 1852(d)(1) of the Social Security Act (42 U.S.C.
5 1395w–22(d)(1)) is amended—

6 (A) by striking “and” at the end of sub-
7 paragraph (D);

8 (B) by striking the period at the end of
9 subparagraph (E) and inserting “; and”; and

10 (C) by adding at the end the following new
11 subparagraph:

12 “(F) meets the requirements of section
13 2753 of the Public Health Service Act with re-
14 spect to individuals enrolled with the organiza-
15 tion under this part.”.

16 (2) SECTION 1876.—Section 1876(c)(4) of the
17 Social Security Act (42 U.S.C. 1395mm(c)(4)) is
18 amended—

19 (A) by striking “and” at the end of sub-
20 paragraph (A);

21 (B) by striking the period at the end of
22 subparagraph (B) and inserting “, and”; and

23 (C) by adding at the end the following new
24 subparagraph:

9 “EQUITY IN PROVISION OF PRESCRIPTION DRUG
10 COVERAGE

20 “(b) WAIVERS PROHIBITED.—The requirement of
21 subsection (a) may not be waived under section 1115 or
22 section 1915(b).”.

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1 (1) in subsection (s)(2), by adding at the end
2 the following new subparagraph:

3 “(E) An issuer of a medicare supplemental policy (as
4 defined in section 1882(g)) shall comply with the require-
5 ments of section 2753 of the Public Health Service Act
6 with respect to benefits offered under such policy.”; and

7 (2) in subsection (t)(1)—

8 (A) in subparagraph (B), by inserting
9 “subject to subparagraph (G),” after “(B)”,

10 (B) by striking “and” at the end of sub-
11 paragraph (E),

12 (C) by striking the period at the end of
13 subparagraph (F) and inserting “; and”, and

14 (D) by adding at the end the following new
15 subparagraph:

16 “(G) the issuer of the policy complies with the
17 requirements of section 2753 of the Public Health
18 Service Act with respect to enrollees under this sub-
19 section.”.

20 (f) FEHBP.—Section 8902 of title 5, United States
21 Code, is amended by adding at the end the following new
22 subsection:

23 “(p) A contract may not be made or a plan approved
24 which excludes does not comply with the requirements of
25 section 2753 of the Public Health Service Act.”.

1 (g) EFFECTIVE DATES.—(1)(A) Subject to subpara-
2 graph (B), the amendments made by subsection (a) apply
3 with respect to group health plans for plan years begin-
4 ning on or after January 1, 2003.

5 (B) In the case of a group health plan maintained
6 pursuant to 1 or more collective bargaining agreements
7 between employee representatives and 1 or more employ-
8 ers ratified before the date of enactment of this Act, the
9 amendments made by subsection (a) do not apply to plan
10 years beginning before the later of—

11 (i) the date on which the last collective bar-
12 gaining agreements relating to the plan terminates
13 (determined without regard to any extension thereof
14 agreed to after the date of enactment of this Act),
15 or

16 (ii) January 1, 2003.

17 For purposes of clause (i), any plan amendment made pur-
18 suant to a collective bargaining agreement relating to the
19 plan which amends the plan solely to conform to any re-
20 quirement added by subsection (a) shall not be treated as
21 a termination of such collective bargaining agreement.

22 (2) The amendments made by subsection (b) apply
23 with respect to health insurance coverage offered, sold,
24 issued, renewed, in effect, or operated in the individual
25 market on or after January 1, 2003.

1 (3) The amendment made by subsection (c) apply to
2 contracts for contract periods beginning on or after Janu-
3 ary 1, 2003.

4 (4) The amendment made by subsection (d) apply to
5 Federal financial participation for State plan expenditures
6 made on or after January 1, 2003.

7 (5) The amendments made by subsection (e) apply
8 with respect to medicare supplemental policies and medi-
9 care select policies offered, sold, issued, renewed, in effect,
10 or operated on and after January 1, 2003.

11 (6) The amendment made by subsection (f) apply
12 with respect to contracts for periods beginning on and
13 after January 1, 2003.

14 (h) COORDINATION OF ADMINISTRATION.—The Sec-
15 retary of Labor, the Secretary of the Treasury, and the
16 Secretary of Health and Human Services shall ensure,
17 through the execution of an interagency memorandum of
18 understanding among such Secretaries, that—

19 (1) regulations, rulings, and interpretations
20 issued by such Secretaries relating to the same mat-
21 ter over which two or more such Secretaries have re-
22 sponsibility under the provisions of this Act (and the
23 amendments made thereby) are administered so as
24 to have the same effect at all times; and

1 (2) coordination of policies relating to enforcing
2 the same requirements through such Secretaries in
3 order to have a coordinated enforcement strategy
4 that avoids duplication of enforcement efforts and
5 assigns priorities in enforcement.

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